UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

UNIVERSITY OF NEW HAVEN Employer and UNITED PROFESSIONAL & SERVICE EMPLOYEES UNION, LOCAL 1222 Petitioner and SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 760 Intervenor	Case No. 34-RC-2180

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, I find that: the hearing officer's rulings are free from prejudicial error and are affirmed; the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction; the labor organizations involved claim to represent certain employees of the Employer; and a question affecting commerce exists concerning the representation of certain employees of the Employer.

The Employer operates a private university at facilities located in West Haven and New London, Connecticut. The Petitioner seeks to represent the Employer's full-time and regular part-time office clerical and secretarial employees. The petitioned-for employees are presently represented by the Intervenor pursuant to a Certification of Representative that issued in Case No. 39-RC-524 on September 24, 1984. Although

the parties are in accord as to the scope and composition of the unit, the Intervenor asserts that further processing of the instant petition should be suspended to permit operation of a no-raiding agreement that it claims exists between the Petitioner and the Intervenor.

Section 11019 of the Board's Casehandling Manual, Part Two, Representation Proceedings, permits a Regional Director to suspend processing of a petition to allow for the operation of a private no-raiding agreement, i.e., one that is not governed by Article XX or XXI of the AFL-CIO Constitution. In such circumstances, the Manual provides that the Board will follow similar procedures with respect to such private agreements as it does with respect to the AFL-CIO no-raiding agreements, only in those cases where "it appears that their operation holds similar promise of resolving representation disputes among the parties to such agreements." For the reasons set forth below, I find that the disputed no-raiding agreement does not hold promise of resolving the jurisdictional dispute between the Petitioner and the Intervenor.

In support of its contention that the Petitioner is bound by a no-raiding agreement applicable to the instant petition, the Intervenor introduced a "Jurisdictional Agreement" (JA) between "Transportation Communications International Union, AFL-CIO (TCU) and its affiliate, the United Service Workers of America (USWA), and the Service Employees International Union, AFL-CIO (SEIU)." The JA, which is signed by representatives of TCU, USWA, and SEIU, and appears to have become effective on September 1, 1999, arose out of the fact that USWA had disaffiliated from SEIU and affiliated with TCU. The JA sets forth the jurisdictional organizing rights of each labor organization and a procedure to be utilized in the event that a dispute arises over the application or interpretation of the JA, ultimately resulting in final and binding arbitration "in lieu of the internal dispute procedures of Article XX and XXI of the AFL-CIO Constitution." The JA further provides that it is binding upon each of the signatory unions' "affiliated bodies" as well as the successors and assigns of such affiliates. Although, as noted above, TCU signed the agreement, in a separate letter dated September 28, 1999, it "conditioned" its signature "on the understanding that, in the event the USWA should disaffiliate from TCU, the agreement is null and void as to TCU."

The Intervenor also introduced an "Affiliation Agreement" (AA) dated December 15, 1998 between the USWA, SEIU, and the Petitioner, whose name at that time was United Service Employees Union, Local 1222 (Local 1222). The AA states that it is effective when signed by the parties and upon approval by SEIU, and that upon approval a charter shall be issued to Local 1222 making it a "direct affiliate" of USWA. The AA introduced into evidence is not signed by SEIU, nor is there any record evidence that a charter was actually issued to Local 1222. The AA also states that as a "direct affiliate" of USWA, Local 1222 is also subject to the Affiliation Agreement between USWA and SEIU. Although a copy of that Affiliation Agreement was supposed to be attached to the AA as Appendix A, it was not introduced into evidence with the AA. Article VI and VIII of the AA provides the procedures to be followed in the event that Local 1222 wishes to disaffiliate during the first four years of the AA. The AA is silent regarding disaffiliation after the first four years.

By letter dated June 15, 2006, the Intervenor, an affiliate of SEIU, requested the Petitioner to comply with the terms of the JA by withdrawing the petition in the instant case. By letter dated August 9, 2006, SEIU's Deputy General Counsel filed an arbitration demand with the American Arbitration Association requesting expedited arbitration of the following issue: "Respondents have violated Section 2 of the Jurisdictional agreement dated September 1, 1999, by raiding a unit of workers at the University of New Haven represented by SEIU Local 760. . . ." The arbitration demand named the following entities as "respondent unions": International Union of Journeymen and Allied Trades (IUJAT); USWA; United Public Service Employees Union (UPSEU); and UPSEU Local 1222 (the Petitioner).

By letter dated August 7, 2006, IUJAT President Steven Elliott notified SEIU that in his view, the JA was no longer valid and did not bind IUJAT or any of its affiliates, including USWA, UPSEU, or Local 1222. According to the letter, USWA disaffiliated from TCU in 2003 and became a national affiliate of IUJAT. In addition, according to the letter, UPSEU and Local 1222 have become direct affiliates of IUJAT, and are no longer affiliates of USWA. The letter further notes that TCU merged with the International Association of Machinists, and that since the JA was signed, the SEIU,

USWA, and IUJAT have disaffiliated from the AFL-CIO. Thus, according to the letter, the JA involved entities that no longer exist, and served a purpose that no longer exists.

The Intervenor also relies upon the facts set forth in the U.S. District Court decision in *Horseshoers Union v. AFL-CIO*, 177 LRRM 2280 (E.D.N.Y. 2004) in support of its assertion that the Petitioner continues to be bound by the JA as an assignee, successor, or alter ego of USWA. The *Horseshoers Union* case involved, inter alia, an action brought by the International Union of Journeymen Horseshoers and Allied Trades (IUJHAT) against the AFL-CIO pursuant to Section 301 of the Act. The lawsuit alleged that the AFL-CIO violated its constitution by refusing to recognize the IUJHAT (which later changed its name to IUJAT) as a chartered AFL-CIO member following IUJHAT's affiliation with the USWA. The facts revealed that IUJHAT came into existence as a result of certain changes to the constitution, bylaws and structure of the International Union of Journeymen Horseshoers (IUJH), a chartered affiliate of the AFL-CIO. At the time these changes were made, the IUJH had only about 55 members and very limited assets. Simultaneous with the changes to its constitution and bylaws, the newly elected officers of the newly formed IUJHT consisted entirely of salaried USWA officers or employees, including its President, Steven Elliott. IUJHT subsequently made further changes to its constitution that permitted affiliations by national unions. As a result of those changes, in late 2003 USWA, an independent national union with approximately 35,000 members, whose President at the time was Steven Elliott's daughter, Lori Ames, became an affiliate of the IUJHT. Following the affiliation, several AFL-CIO unions objected to the continued affiliation of IUJHT with the AFL-CIO, apparently because of the USWA's history of raiding AFL-CIO unions. As a result of those objections, and following an exchange of letters between IUJHT President Elliott and AFL-CIO President Sweeney, Sweeney informed Elliott, inter alia, that the AFL-CIO would not recognize the IUJHT-USWA affiliation as a bona fide affiliation or merger that entitled the IUJHT to automatic status as an AFL-CIO chartered affiliate. Thus, the AFL-CIO considered the former IUJH as having disaffiliated from the AFL-CIO upon its affiliation with or merger into the independent USWA, thereby requiring the IUJHT to petition for a charter if it wished to become affiliated with the AFL-CIO. It was that action by the AFL-CIO that led to the filing of the lawsuit.

The District Court dismissed the Section 301 claim in *Horseshoers Union* on the basis that the AFL-CIO's actions were not "patently unreasonable". In this regard, the District Court noted that the "undisputed evidence" before it established that:

> any reasonable finder of fact would have to conclude that USW's officers and employees were ceded plenary control of IUJH in February of 2002 and that over the next year and a half, with elaborate formality but with no overt recognition of the now-total overlap between the two bodies' governance, they affiliated it with USW and with independent, non-AFL-CIO local and national organizations, a number of which were led by USW officers and employees. The new organization dwarfed the original IUJH. The original IUJH's membership and the successor Horseshoers Division lost any control over the International's Executive Board and all but token representation at its convention. The new body almost immediately attempted to change its name to drop any reference to horseshoeing and to substitute the words "United Service." Brooker, the sole common thread between the old and new unions, remained present in a subordinate staff position. It is also undisputed that USW remained a structurally autonomous organization under the shelter of IUJHAT's AFL-CIO charter and subject to no control by or accountability to the minuscule portion of the International that had been IUJH.

In response to the Intervenor's contention regarding the applicability of the JA, the Petitioner proffered testimony from its Vice-President, Gary Hickey. Hickey testified that on or about April 19, 2006, the Petitioner disaffiliated from the USWA and affiliated with IUJAT. According to Hickey, the Petitioner's request to disaffiliate from USWA was approved on April 19. Thus, according to Hickey, the Petitioner and USWA are now each direct affiliates of IUJAT, but are no longer affiliated with each other. Hickey was unaware of any documents generated or filed with the Department of Labor or any other documents generated regarding the disaffiliation, and none were offered at the hearing.

Based upon the foregoing, I find that although there is sufficient evidence to support the Intervenor's contention that the Petitioner is "arguably bound" to the JA,[1] I am unable to conclude that the no-raiding provisions of the JA hold promise of resolving the jurisdictional dispute between the Petitioner and the Intervenor. With regard to the latter, I note the undisputed evidence that the Petitioner has refused to be bound by the JA and will oppose any further attempt to enforce the JA against it. In this regard, I note the Intervenor's assertion that an arbitrator's award issued pursuant to the JA requiring the Petitioner to withdraw the instant petition is enforceable in the Federal Courts

[1] See Casehandling Manual, Part Two, Representation Proceedings , Sec. 11018.1(d).

pursuant to Section 301 of the Act, and that such enforcement would require the Petitioner to withdraw the instant petition under threat of contempt. However, it is long established that the Board will not recognize the withdrawal of a petition under such circumstances because the withdrawal is not "voluntary," but is compelled by the no-raid pact. *Cadmium & Nickel Plating, Division of Great Lakes Industries, Inc.*, 124 NLRB 353 (1959). Thus, as the Board reasoned, "to allow the withdrawal of the petition under the circumstances herein would be to permit a private resolution of the question concerning representation in a manner contrary to the policies of the Act and would impinge upon the Board's exclusive jurisdiction and authority to resolve such questions of representation." Id. at 354. See also *VFL Technology Corporation*, 329 NLRB 458 (1999); *Anheuser-Busch, Inc*., 246 NLRB 29 (1979); and *Weather Vane Outerwear Corp*., 233 NLRB 414 (1977). Inasmuch as the Board would not ultimately defer to the compelled withdrawal of the instant petition pursuant to an arbitrator's award under the JA, I am unable to conclude that the no-raiding provisions of the JA hold promise of resolving the jurisdictional dispute between the Petitioner and the Intervenor.

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time office clerical and secretarial employees employed by the Employer at its West Haven and New London, Connecticut facilities, consisting of Administrative Secretaries I and II, Executive Secretaries, Receptionist/Console Operator, Library Clerks I and II, Library Assistants, Library Technical Assistants, Library Processing Assistant, Accounts Clerks I and II and III, Administrative Clerks I and II and III, Duplication Clerks, Data Entry Clerks, Data Communications Specialists, and Mail/Receiving Clerks; but excluding all other employees, the Executive Secretary to the President, the Assistant to the President and the Chair of the Board of Governors, the Executive Assistant to the Provost, the Executive Secretaries and/or Assistants to the Vice Presidents and Associate Vice President of the University, the Assistants to the Deans of the School of Business, the College of Arts and Sciences, the School of Engineering, and the School of Public Safety and Professional Studies, the Human Resources Representative and the Human Resources Secretary, other confidential employees, managerial employees, work study employees, students of the University employed through financial aid programs of the University, temporary employees, casual employees, nurses, the postmaster, escorts and escort drivers, dispatchers, and other guards, professional employees and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate herein at the time and place set forth in the notices of election to be issued subsequently.

Eligible to vote: those employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were in the military services of the United States, ill, on vacation, or temporarily laid off; and employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements.

Ineligible to vote: employees who have quit or been discharged for cause since the designated payroll period; employees engaged in a strike who have been discharged for cause since the strike's commencement and who have not been rehired or reinstated before the election date: and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

The eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by United Professional & Service Employees Union, Local 1222, or Service Employees International Union, Local 760.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned, an eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional office, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before September 12, 2006. No extension of

time to file these lists shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570, or electronically pursuant to the guidance that can be found under "E-gov" on the Board's web site at www.nlrb.gov. This request must be received by the Board in Washington by September 19, 2006.

Dated at Hartford, Connecticut this 5th day of September, 2006.

/s/ Peter B. Hoffman

Peter B. Hoffman, Regional Director
National Labor Relations Board
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